



NEWSLETTER



Information and Privacy Commissioner / Ontario

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Messages from the Assistant Commissioners

Privacy

During 1990, the Office of the Information and Privacy Commissioner conducted a review of AIDS-related personal information in the public health sector. The review traced the flow of AIDS-related personal information between the Ministry of Health's Public Health Branch, its Public Health Laboratories, and selected municipal Health Units. Five institutions were reviewed: two provincial - the Public Health Branch, Ministry of Health and the Central Laboratory, Ministry of Health; and three municipal health units - North York, East York and Simcoe.

The purpose of the review was to ensure that the procedures and practices associated with the collection, retention, use and disclosure of AIDS-related personal information complied with the provisions of the *Freedom of Information and Protection of Privacy Act*, 1987. We also reviewed the security practices associated with the storage of this information.

Seven reports were prepared: five detailed reports which reviewed the above-mentioned institutions, as well as "the Reportable Disease Information System" (RDIS), and an overall "Summary Report of Significant Findings". RDIS is a system acquired by the Ministry of Health to automate the case management of its reportable diseases. The Summary Report outlines the significant findings and recommendations made in each of the detailed reports. We are pleased to report that no serious breaches of security were found.

Objectives

Specifically, our objectives were to ensure that AIDS-related personal information was:

- * Collected in accordance with the *Act*;
- * Processed in such a manner that records were accurate and up-to-date, in accordance with the *Act*;
- * Retained and disposed of in accordance with the *Act* and the regulations made thereunder;
- * Stored in a secure manner.

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Access

Key to the Community, a conference devoted to major issues concerning freedom of information and protection of privacy took place in Toronto on September 28 and 29, 1990. The conference was the largest of its kind in North America and attracted more than 500 delegates. I had the pleasure of giving the keynote address and in my remarks I focused on the new *Municipal Freedom of Information and Protection of Privacy Act* and highlighted the role of the Commissioner's office.

I explained that this *Act* and other freedom of information statutes have changed the philosophy of access to information held by governments to a right from a privilege. It permits the public to decide what kind of information it wishes to have and provides the routes of access for the public to follow when information is not available through customary sources. It also places the onus on government to show why information should not be released.

The Information and Privacy Commissioner in Ontario has much more authority than in most other systems. The Commissioner is an officer of the Legislature, independent of the government of the day, and has the power to independently review decisions of the government and make orders regarding the release of information which are final and binding.

The role of the Commissioner is basically threefold: to review decisions made by governments regarding access to information; to ensure that governments are protecting the privacy of individuals by correctly using personal information in their custody; and to educate the public about the provincial and municipal *Acts* so that citizens of Ontario are aware of the rights given to them by the legislation.

There are some concrete differences between access and privacy. Access is very much requester-driven. A government organization may receive many or few requests for information depending on factors such as: the size and level of activity of the organization, the community's level of interest in government and past

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Privacy (cont'd)

Recommendations

In all, 27 recommendations were made. Generally, they related to procedural and operational matters. Overall, we felt that most HIV/AIDS-related personal information could be collected and stored anonymously instead of nominally. Among the specific recommendations were the following:

- * Because AIDS-related information is needed only for statistical purposes and epidemiological analysis, the Ministry of Health should discontinue its collection of personal identifiers associated with this information;
- * Because the individual's name and address are not required by the Public Health Branch of the Ministry of Health, subsection 6(2) of Ontario Regulation 490/85 made pursuant to the *Health Protection and Promotions Act* should be amended to include AIDS as a disease for which the individual's name should *not* be reported to the Ministry of Health.
- * With regard to the HIV Serology Requisition form:
 - a doctor should indicate whether or not a patient has given his or her consent to have HIV antibody testing conducted;
 - the form should be re-designed so the Central Laboratory's copy does not contain any nominal patient identification, such as the individual's name;
- * All AIDS-related personal information should be dispatched by courier in unmarked envelopes under "private and confidential" cover.

In addition to the audit component of the review, the IPC also developed a flow chart of HIV/AIDS-related personal information, from the initial time of testing to the final test results and ultimate transmission of statistical information to the Federal Centre for AIDS.

I would like to take this opportunity to thank the Ministry of Health and the participating health units for their assistance and co-operation.

Ann Cavoukian, Ph.D.

Access (cont'd)

practices of the organization with respect to making information available.

Once an organization has the people and systems in place to deal with requests, the process becomes relatively straightforward. If the legislation is approached in the spirit in which it was written - that the public has the presumed right of access to general records and that exemptions from that right should be limited and specific, then organizations should be able to successfully comply with the *Act*.

Just as institutions need to put people and systems in place to deal with access requests, systems of a different sort are required to ensure that the privacy of individuals is not being invaded. An institution has the responsibility of protecting personal information, regardless of whether or not it receives any access requests for the information. The privacy provisions of the *Act* require institutions to follow strict rules in collecting, using, disclosing, storing and disposing of personal information - all of which are intended to protect the privacy of the individuals concerned.

Management Board of Cabinet and the staff from the Commissioner's office have provided training sessions across the province on the municipal *Act* and have spoken to more than 4,000 people from municipal organizations. While I hope the sessions were worthwhile for those who attended, they were also valuable for the Commissioner's office. A number of specific local concerns relating to both access and privacy were raised at the sessions and we are investigating those issues now, so we can be ready to address them.

We are also sensitizing our staff to the special circumstances of municipalities, school boards and other local agencies so they can be more aware of issues and concerns at the local government level.

I reminded delegates that reference material, both printed and audio-visual, has been developed by our office and Management Board to help local government organizations administer and understand the new *Act*. By January 1, we will have the benefit of three years' experience with the provincial *Act*. We are looking forward to the implementation of the *Municipal Freedom of Information and Protection of Privacy Act* and the challenges it will bring.

Tom Wright



IPC Applauds Proposed Bill

On December 13, 1990, Health Minister Evelyn Gigantes tabled a bill in the Legislature designed to protect the confidentiality of Ontario's health card numbers. Under this legislation, only the Ministry of Health and those who provide health care services, such as doctors and other health care practitioners, may require people to show their cards and use the health numbers.

When the bill becomes law, it will prohibit individuals, businesses and organizations from requiring people to provide their health number. It will also prohibit the collection of health numbers to obtain information from data banks or for credit checks. Anyone other than health care professionals who require a person to show his or her card are subject to fines or a jail term of up to two years.

History

Under the *Freedom of Information and Protection of Privacy Act, 1987*, one of the mandates of the Office of the Information and Privacy Commissioner is to comment on the privacy protection implications of proposed legislation and government programs. In early 1990, the Commissioner's Office initiated a series of discussions with senior officials at the Ministry of Health concerning how the new health number could present serious new threats to the privacy of Ontario residents.

The discussions culminated in a letter to the former Minister of Health, in which the IPC emphasized the need to place controls on the use of the new number. We referred to Canada's experience with the misuse of the Social Insurance Number (S.I.N.) to illustrate how a unique personal identifier could be abused if not adequately controlled at the time of introduction. The IPC recommended that legislation be introduced to restrict the use of the health number by the Ontario govern-

ment to specified health-related purposes and to prohibit its use by the private sector.

In her statement to the Legislature, Ms. Gigantes said: "The right to individual privacy and the confidentiality of health information is far more important than the convenience to businesses and other organizations of having yet another way to establish the identity of individuals. We intend to protect the confidentiality of information associated with the provisions of health services." Ms. Gigantes also announced the ministry's commitment to introducing a wide-ranging health information privacy bill.

The Office of the Information and Privacy Commissioner is extremely pleased that the government has introduced controls on the use of the new health number in such a timely fashion. We also look forward to further developments associated with the broader health care and information protection legislation expected in 1991.

Welcome Municipalities

The Office of the Information and Privacy Commissioner welcomes all institutions now governed by the *Municipal Freedom of Information and Protection of Privacy Act, 1989*. The Act, which came into effect January 1, 1991, covers over 3,000 municipalities, local boards, agencies and commissions.

In early December, **Irwin Glasberg** joined the Information and Privacy Commissioner as the new Director of Appeals. Over the last few years, he has held several positions with the Workers's Compensation Board. In addition to implementing the *Freedom of Information and Protection of Privacy Act* at the WCB, he has served as General Counsel to the WCB, Executive Director of the Review Services Department, Executive Director of Policy and Program Development, and Executive Director of the Revenue Department.

Prior to joining the WCB, Mr. Glasberg was the Director of Appeals with the Occupational Health and Safety Division of the Ministry of Labour.

One of Mr. Glasberg's challenges will be to work with agency staff to identify situations where the present appeal process can be made more effective. This objective is particularly important since the workload of the Appeals department is expected to increase with the extension of the *Act* to municipalities.



Update On IPC's Computerized Tracking System

In December, a users' manual and system software were mailed to all organizations which ordered the IPC's FOIP Tracking System. This system will assist in tracking access requests received under the *Freedom of Information and Protection of Privacy Act, 1987*, and the *Municipal Freedom of Information and Protection of Privacy Act, 1989*.

The purpose of the FOIP Tracking System is to allow coordinators to monitor requests and produce summary reports from a database of request information. In general terms, all the information recorded on Management Board of Cabinet's Tracking and Recording Form will be accommodated and the annual, year-end report required by the IPC can be produced automatically.

For any questions or problems regarding the new system, please phone the IPC **HOT LINE** answering machine at (416) 326-1989. Users are asked to leave a message briefly describing any problem or question. Please don't forget to include your name, organization name, area code and telephone number and we will get back to you with an answer as soon as possible.

Anyone who would like to order the tracking system should call the **HOT LINE**. The system is designed for IBM/PC or 100 per cent compatible machines. The system is provided free of charge.

Reminder: Coordinators **DO NOT** need to track requests for access to records made in a customary manner. Only formal, written requests made under the *Freedom of Information and Protection of Privacy Act, 1987* or the *Municipal Freedom of Information and Protection of Privacy Act, 1989* should be recorded for the year-end report to the Commissioner.

The Three Year Review

The Standing Committee on the Legislative Assembly has scheduled its review on the *Freedom of Information and Protection of Privacy Act, 1987*, as amended, during the weeks commencing February 4 - 7, and February 25 - 28, 1991. Anyone wishing to make a submission to the committee should contact:

Mr. Douglas Arnott, Committee Clerk
Standing Committee on the Legislative Assembly
Room 1521, Whitney Block,
Queen's Park
Toronto, Ontario
M7A 1A2
(416) 965-2491

Guidelines on Indirect Collection

Both the provincial and municipal freedom of information and protection of privacy acts stipulate that personal information must be collected directly from the individual to whom it relates, except in specific and limited circumstances. Collection of this information from a source other than the person to whom it relates is called "indirect collection".

The legislation recognizes that it is not always possible to collect personal information directly from the person to whom it relates and gives the Information and Privacy Commissioner the authority to approve the manner of collection if it is not directly from the individual. The task of the Commissioner is to identify and evaluate the various privacy implications of indirect collection.

"*Guidelines on Indirect Collection*" have been created to assist institutions in preparing applications for the Commissioner's consideration. These guidelines should be regarded as the minimum standards, which may need to be supplemented as the circumstances require. They provide suggestions on issues which should be considered at the time a requesting institution first contemplates indirect collection. The document also discusses suggested topics to be included in an application to the Commissioner. Each component of the guidelines is described in detail so the requesting institution will understand what issues should be considered and what specific kinds of information need to be provided to the Commissioner.

Institutions applying for authorization to collect information indirectly may obtain "*Guidelines on Indirect Collection*" from the Commissioner's Office.

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